

TINASHE CHIKOSHA
and
WALTER NENYERE
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 30 November 2016 and 1 December 2016

Sentence

Assessors: 1. Mr Mhandu
 2. Mr Barwa

H Muringani, for the State
Ms S Vas, for the accused 1
T J Majongoya, for accused 2

ZHOU J: During *allocutus* the second accused person stated that at the time that the offence was committed he was only 20 years old and did not have a full appreciation of the consequences of his conduct. He advised the court that he is now aged 23 years. The matter was then adjourned to today 1 December 2016 to enable the second accused person to produce proof of his age as he had advised the court that he did not have a birth certificate, but had his National Identity card which was at the remand prison. A copy of the second accused person's national identity card was produced. It shows his date of birth to be 30 December 1992. Having regard to the date when the offence was committed, the 28 September 2013, the accused person would have been 20 years nine months old at the time that the offence was committed. That places him within the category of persons upon whom death sentence may not be passed in terms of s 338 (b) of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

Mr *Mafongoyo*, for the second accused, explained that when he advised the court of the age of 23 years in respect of accused 2 that submission was based upon his understanding of the instructions given to him as well as some of the documents which he had been furnished with.

Having regard to the age of the second accused person, the court is therefore enjoined to consider a sentence less than the death penalty.

In view of the seriousness of the offence involving, as it did, the loss of life in a very cruel manner, the court considers that a long period of imprisonment is warranted notwithstanding the youthful age of the accused person. That is not to say that the court has not considered his age and the effect it probably had upon him. Due weight has been attached to his age, together with the fact that he is a first offender and has a family. It is hoped that a definite period of imprisonment, as opposed to a penalty of life imprisonment, will give the second accused person an opportunity to reform when he comes out of prison.

In the result, the second accused person is sentenced as follows:

“20 years imprisonment.”

As regards accused one, during *allocutus* the only submission he made was that he considers the court to be his father. He pleaded that the court should give him a chance to reform and look after his family. Those are not submissions that have substance at that stage of the proceedings. After all, as pointed out in the judgment in respect of aggravation and mitigation, he is the one who carried the knife. He used that okapi knife to commit the murder.

The court is not, therefore, convinced that any good reason has been tendered for it not to impose sentence of death.

In the result sentence of death is imposed in respect of the first accused person:

It is ordered that the first accused person TINASHE CHIKOSHA be returned to custody, and the sentence of death shall be executed according to law.